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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/059,538
Filing Date: January 29, 2002
Appellant(s): KNOOP, DALE

KNOOP, DALE
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/24/2007 appealing from the Office action mailed 03/06/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US-2002/0099790	Mosher et al.	07-2002
US-2003/0079020	Gourraud et al.	04-2003
US-6,952,279	Iida	10-2005
US-6,779,195	Oishi et al.	08-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

I) Claims 1-11 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosher (US-2002/0099790) in view of Gourraud (US-2003/0079020).

Consider claim 1, Mosher discloses a method of selecting a transmission mode for streaming media content to a wireless handset (figures 3A-3G, 5 and 6, and paragraphs 0015 and 0034-0040), the method comprising:

presenting on the wireless handset a set of choices indicating transmission modes for streaming media content to the wireless handset (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277);

receiving from a user of the wireless handset an indication of a transmission mode selected from the set of choices (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277);

sending from the wireless handset to a media server an indication of the selected transmission mode (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277); and

receiving into the wireless handset media content streamed from the media server at the selected transmission mode (figures 3A-3G, and paragraphs 0058, 0062-0077; 0091, 0104, 0113, 0122-0124, 0252, and 0277). But, Mosher does not specifically disclose that the set of choices is tailored based on at least one presentation capability of the wireless handset; and receiving a list of available media contents wherein all media content in the list of available media content is compatible with the indicated transmission mode and therefore capable of presentation on the wireless handset and receiving from a user a selection of one of the media content in the list of available media content. However in analogous art, Gourraud teaches receiving the set of choices is tailored based on at least one presentation capability of the wireless handset ("viewed or listened" see [0032] and [0038]); and receiving a list of available media contents wherein all media content in the list of available media content is compatible with the indicated transmission mode (fig. 7 see [0038]-[0044]) and therefore capable of

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presentation on the wireless handset and receiving from a user a selection of one of the media content in the list of available media content ([0038]-[0044]); therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Mosher as taught by Gourraud because "the end-user always downloads selected programs from the content provider through the service provider" and "for the provision of various types of multimedia content to the end-user. It would be also practical to have a network model that avoids the occurrence of bandwidth bottlenecks at the level of any node of the network, including at the level of the service provider. Furthermore, it would be convenient to provide the end-user with increased flexibility for accessing and viewing, or listening to, the selected programs" see [0004]-[0011]).

Consider claims 2, 3, and 8, and as applied to claim 1 above, Mosher, as modified by Gourraud, discloses:

sending the set of choices from the media server to the wireless handset (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277); and

the media server establishing the set of choices to send to the wireless handset using a type of media content (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277).

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Consider claims 4-7 and 9-11, and as applied to claims 1 and 3 above, Gourraud further discloses sending from the wireless handset to the media server a capability indication for the wireless handset, wherein sending a capability indication further comprises sending from the wireless handset to the media server an indication of a make and model of the wireless handset (e.g., SIP INVITE message), wherein the capability indication indicates the at least one presentation capability, and wherein the at least one presentation capability defines a capability of a media player application, is selected by the user, and includes a plurality of presentation capabilities (fig. 7 see [0038]-[0044]); and the media server using the capability indication as a basis to establish the set of choices to send to the wireless handset (fig. 7 see [0038]-[0044]).

Claims 18-21 are similarly rejected from the same reasons explained in detail above for claims 1-11.

Consider claim 22, method for streaming media content to a wireless handset (figures 3A-3G, 5 and 6, and paragraphs 0015 and 0034-0040), the method comprising:

determining a list of permissible transmission modes for a selected media content choice (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277);

providing the user with the list of permissible transmission modes for the selected media content choice (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277);

receiving into the wireless handset the selected media content choice at a selected transmission mode, the selected transmission mode having been selected by the user from the list of permissible transmission modes (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277).

But, Mosher does not specifically disclose providing a user of the wireless handset with a list of media content choices, wherein the list of permissible transmission modes is tailored to the presentation capabilities of the wireless handset; and the selected media content choice having been selected by the user from the list of media content choices. However, Gourraud teaches providing a user of the wireless handset with a list of media content choices (figs. 4 and 7 see [0038]-[0044]), wherein the list of permissible transmission modes is tailored to the presentation capabilities of the wireless handset ("viewed or listened" see [0032] and [0038]); and the selected media content choice having been selected by the user from the list of media content choices (figs. 4 and 7 see [0038]-[0044]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Mosher as taught by Gourraud because "the end-user always downloads selected programs from the content provider through the service provider" and "for the provision of various types of multimedia content to the end-user. It would be also practical to have a network model that avoids the occurrence of bandwidth bottlenecks at the level of any node of the network, including at the level of the service provider. Furthermore, it would be convenient to provide the end-user with increased flexibility for accessing and viewing, or listening to, the selected programs" see [0004]-[0011]).

II) Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mosher in view of Gourraud and further in view of Iida (US-6,952,279).

Consider claim 24, and as applied to claim 22 above, Mosher further discloses wherein determining a list of permissible transmission modes for a selected media content choice comprises: identifying a full set of transmission modes (figures 3A-3G, and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277). But, Mosher and Gourraud do not specifically disclose removing from the full set of transmission modes any transmission mode that is not supported by the wireless handset. However in analogous art, Iida teaches removing from the full set of transmission modes any transmission mode that is not supported by the wireless handset; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Mosher and Gourraud as taught by Iida in order to reflect "the user entered data in the HTML file of reception list corresponding to the operation content, the user is able to modify the reception list in homepage format provided from WWW server section 12" (col. 12, lines 1-22).

III) Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mosher in view of Gourraud and further in view of Oishi (US-6,779,195).

Consider claim 25, and as applied to claim 22 above, Mosher further discloses wherein determining a list of permissible transmission modes for a selected media content choice comprises: identifying a full set of transmission modes (figures 3A-3G,

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and paragraphs 0058, 0062-0077, 0091, 0104, 0113, 0122-0124, 0252, and 0277). But, Mosher and Gourraud do not specifically disclose removing from the full set of transmission modes any transmission mode that is unnecessary for the media type of the selected media content choice. However in analogous art, Oishi teaches removing from the full set of transmission modes any transmission mode that is unnecessary for the media type of the selected media content choice (see col. 1, lines 7-25); therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Mosher and Gourraud as taught by Oishi in order for "preventing confusion of viewers by displaying no program guide information in relation to the program information not existing in the NIT among those detected from the digital broadcast data" (see col. 1, lines 7-25).

(10) Response to Argument

Appellant's arguments have been fully considered but they are not persuasive.

A) Appellant argued that

The Examiner Erred in Rejecting Claims 1-11 and 18-21 as Being Obvious over a Combination of Mosher and Gourraud

The rejections of claims 1-11 and 18-21 under 35 U.S.C. § 103(a) are improper because the Examiner has failed to establish a prima facie case of obviousness of the claims over a combination of Mosher and Gourraud. In order to establish a prima facie case of obviousness over a combination of references, the combination must teach or suggest all of the claim limitations. MPEP § 2143.03; In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In this case, however, even if Mosher and Gourraud were to be combined together, the resulting combination would still fail to teach or suggest all of the limitations recited in claims 1-11 and 18-21.

The examiner respectfully disagrees with the appellant's argument. Firstly, It is believed that the combination of Mosher and Gourraud teaches or suggests every

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claimed limitation of claims 1-11 and 18-21 as shown in previous section. Secondly, a reasonable expectation of success was met since both references are from a similar field of endeavor and the combination of the two references would not be in opposition to either references' functions and operations thus resulting a reasonable expectation of success. Thirdly, motivation was met by providing a motivation from the secondary reference, Gourraud, ("It would be also practical to have a network model that avoids the occurrence of bandwidth bottlenecks at the level of any node of the network, including at the level of the service provider. Furthermore, it would be convenient to provide the end-user with increased flexibility for accessing and viewing, or listening to, the selected programs" see [0004]-[0011]). It is noted that the mere fact that all the claimed elements or steps appear in the prior art is not per se sufficient to establish that it would have been obvious to combine those elements. *United States v. Adams*, *supra*; *Smith Industries Medical systems, Inc. v. VitalSigns, Inc.*, 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1420 (Fed. Cir. 1999). However, "[a]s long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor." *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992). Motivation to combine references under 35 U.S.C. § 103 must come from a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 665, 57 USPQ2d

1161, 1167 (Fed. Cir. 2000). Consequently, a prima facie case of obviousness under 35 U.S.C. 103 has been established.

1-2) Appellant argued that "Gourraud discloses a choice of programs, not a choice of transmission modes" and "Gourraud does not disclose presenting the terminal with a set of choices that is tailored based on at least one presentation capability of the terminal". The examiner respectfully disagrees with the appellant's arguments. Gourraud discloses a program list including a plurality of selected programs, which are provided by a plurality of content providers (see [0014] and fig. 7). More specifically, Gourraud discloses each of the content providers having at least one given type of media programs such as for example movies ("video" for "view"), songs ("audio" for "listen"), etc. (see [0013]) and the user can select the program to be viewed [0041] based on presentation capability of the terminal ("at least one", which is an alternative phrase. Therefore, the reference need only show "view" as the presentation capability of the terminal). Since, appellant specifies "a transmission mode" as "video only, audio only" (see appellant's specification page 9)

A transmission mode can specify, for instance: a high bit rate, a low bit rate, other specific bit rates, video only, audio only, video plus audio, and periodic stills plus audio.

It is known in the art that the different media programs are required a different bandwidth transmission modes and/or as well as a different bit rate transmission modes (i.e., video streaming for video program is required a high bandwidth transmission mode and/or as well as a fast bit rate transmission mode; while audio streaming for audio program is required a low bandwidth transmission mode and/or as well as a slow bit

rate transmission mode); thus, it is reasonably interpreted a choice of programs as a choice of transmission mode. Thus, Gourraud discloses claimed limitation of "the set of choices is tailored based on at least one presentation capability of the wireless handset".

3) Appellant argued that "Gourraud does not disclose receiving a list of available media contents wherein all media content in the list of available media content is compatible with a user-selected transmission mode". The examiner respectfully disagrees with the appellant's arguments. Gourraud describes that a plurality of the content providers provide the media programs to the user terminal via the service provider. Each of the content providers comprises at least one given type of "media programs" (such as movie for viewing or song for listening), which is reasonably interpreted as claimed limitation of "transmission mode". Since, Gourraud describes that the user terminal sends a program list including a plurality of selected programs [0014] to a service provider. Therefore, it would be evident to one skilled in the art that the user terminal must receive a list of media content, in order for the user terminal of capable in selecting one or more media contents then sending one or more selected media contents to the service provider. Consequently, Gourraud discloses receiving a list of available media contents wherein all media content in the list of available media content is compatible with a user-selected transmission mode".

B. Applicant argued that "

"even if program list 103 in Gourraud were somehow considered to be a list of permissible transmission modes, program list 103 would still not meet the claim requirement of

"providing the *user* with the list of permissible transmission modes." This is because program list 103 is *created* by the user, not *provided* to the user"³²

The examiner respectfully disagrees with the appellant's arguments. Same as cited above, Gourraud discloses that each of the content providers having at least one given type of media programs such as for example movies ("video" for "view") songs ("audio" for "listen"), etc (see [0013]) and the user can select a program from a program list (PL 103) to be viewed [0041] based on presentation capability of the terminal ("at least one", which is an alternative phrase. Therefore, the reference need only show "view" as the presentation capability of the terminal). Gourraud also particularly discloses that the program list containing a plurality of programs, which are provided by a plurality of content providers (see fig. 7). Since, appellant specifies "a transmission mode" as "video only, audio only" (see appellant's specification page 9), it is interpreted a program list as a list of permissible transmission modes. Thus, Gourraud discloses claimed limitation of "a list of permissible transmission modes that is tailored to the presentation capabilities of the wireless handset".

C. In response to the appellant's argument, with regard to the rejection of claim 24 as being obvious over a combination of Mosher, Gourraud, and Iida, it is believed that Mosher and Gourraud disclose all the limitations of the independent claim 22 (see section above) from which claim 24 depends. Thus, the combination of Mosher, Gourraud and Iida can be used to establish *prima facie* obviousness for claim 24 because the references teach or suggest all claim limitations as required. See MPEP §

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2143.03. Therefore, prima facie obviousness under 35 U.S.C. § 103 has been established.

D. In response to the appellant's argument, with regard to the rejection of claim 25 as being obvious over a combination of Mosher, Gourraud, and Oishi, it is believed that Mosher and Gourraud disclose all the limitations of the independent claim 22 (see section above) from which claim 24 depends. Thus, the combination of Mosher, Gourraud and Oishi can be used to establish prima facie obviousness for claim 25 because the references teach or suggest all claim limitations as required. See MPEP § 2143.03. Therefore, prima facie obviousness under 35 U.S.C. § 103 has been established.

(11) Related Proceeding(s) Appendix

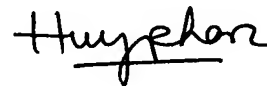
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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(12) Conclusion


For the above reasons, it is believed that the rejection is proper, and the Board of Patent Appeals and Interferences is therefore respectfully urged to sustain the Examiner's rejection.

Respectfully submitted,




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